

2012 WL 5953727 (Ill.Cir.Ct.) (Trial Pleading)  
Circuit Court of Illinois.  
County Department  
Law Division  
Cook County

Estate of Geronimo NUNEZ, Plaintiff,  
v.  
ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC., Defendants.

No. 2012-L-013146.  
November 20, 2012.

Plaintiff Demands a Jury Trial

### **Complaint At Law**

Muslin & Sandberg, Steven B. Musin, 19 S. LaSalle Street, Suite 700, Chicago, Illinois 60603, (312) 263-7249, Attorney No. 43736.

Plaintiff, ESTATE OF GERONIMO NUNEZ, by attorneys, Muslin & Sandberg, through Steven B. Muslin, complains of the defendant as follows:

### **I. Introduction**

1. This case involves allegations of negligence against the defendant, ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC., which resulted in significant injuries to GERONIMO NUNEZ and eventually led to her death on November 20, 2010. This action is brought pursuant to Illinois common law, the Nursing Home Care Act (“NHCA”) (210 ILCS 45/1-101, *et seq.*), the Illinois Department of Public Health regulations (77 Ill. Admin. Code, Part 300) and any and all other applicable statutes.

### **II. Parties**

#### **A. Plaintiff**

2. GERONIMO NUNEZ was born XX/XX/1911. GERONIMO NUNEZ died on November 20, 2010. At the time of his death, GERONIMO NUNEZ was 99-years old.

#### **B. Defendant**

3. Defendant, ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC. (hereinafter “ALDEN-TOWN MANOR”), is an Illinois corporation that owns, operates and/or manages a skilled nursing care facility known as ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC., located at 6120 West Ogden, Cicero, Illinois 60804.

### **III. Jurisdiction**

4. The court has jurisdiction over the lawsuit because the action arises under state law.

### **IV. Venue**

5. Venue is proper in the Circuit Court of Cook County, Illinois because a substantial part of the events or omissions giving rise to this claim occurred in this county.

### **V. Vicarious Liability**

6. Whenever in this complaint it is alleged that a defendant did any act or thing, it is meant that the defendant's agents, officers, servants, borrowed servants, employees or representatives did such act or thing and that the time such act or thing was done, it was done with the full authorization or ratification of defendant or was done in the normal and routine course and scope of employment of defendant's officers, agents, servants, borrowed servants, employees or representatives. The principal is vicariously liable for the acts of the agent because of an employer employee status, agency by estoppel, ostensible agency or borrowed servant doctrine.

### **VI. Facts**

7. At all times material herein, ALDEN-TOWN MANOR was the owner, operator, controller, manager, and/or licensee of a facility commonly known as ALDEN-TOWN MANOR located at 6120 West Ogden, in City of Cicero, County of Cook and State of Illinois.

8. At all times material herein, ALDEN-TOWN MANOR was under a duty to own, operate, control, manage, and/or maintain the facility with ordinary and reasonable care.

9. At all times material herein, was a skilled nursing facility providing skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with medical supervision.

10. ALDEN-TOWN MANOR out as providing skilled nursing facility for individuals and offering a specially designed program of personalized skilled nursing care services for residents.

11. At all times material herein, ALDEN-TOWN MANOR employed various personal including, but not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physicians, and other caregivers, who acted as its actual agents and/or employees relative to the care rendered to GERONIMO NUNEZ.

12. At all times material herein, ALDEN-TOWN MANOR employed various personal including, but not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physicians, and other caregivers, who acted as its apparent agents and/or employees relative to the care rendered to GERONIMO NUNEZ.

13. At all times material herein, various personal at ALDEN-TOWN MANOR including, but not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physicians, were acting within the course and scope of their agency and/or employment while rendering care, treatment, and/or services to GERONIMO NUNEZ

14. At the time of her admissions to ALDEN-TOWN MANOR, GERONIMO NUNEZ was accepted and admitted as a resident at ALDEN-TOWN MANOR, who agreed to provide personal care, sheltered care, and/or nursing to GERONIMO NUNEZ.

15. At all times material herein, ALDEN-TOWN MANOR held itself out as and otherwise informed the public that they possessed the requisite skill, competence, facilities, know-how, and personnel to properly care for the residents of ALDEN-TOWN MANOR, including GERONIMO NUNEZ.

16. Upon entering the defendant's facility, GERONIMO NUNEZ entrusted herself entirely to the care of ALDEN-TOWN MANOR, by and through its duly authorized agents, servants and/or employees.

17. At all times material herein, ALDEN-TOWN MANOR was a 234-bed facility licensed by the State of Illinois as a long term care facility.

18. That at all times relevant herein, GERONIMO NUNEZ was in the exercise of due care and caution for her own safety and well-being.

### **Count I**

#### **(Nursing Home Care Act)**

19. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-six (26) with the same force and effect as though fully set forth herein.

20. That at all times complained of herein, ALDEN-TOWN MANOR, by and through their agents, servants, and/or employees, had a duty to avoid needlessly endangering residents.

21. That at all times complained of herein, ALDEN-TOWN MANOR, each, had an independent duty to assume responsibility for the care of their residents.

22. At all times relevant herein, ALDEN-TOWN MANOR had a duty to exercise reasonable care to avoid injury to patrons, and the reasonableness of such care is to be assessed in the light of the patron's physical and mental condition.

23. At all times relevant to this Complaint, there was in full force and effect, a statute commonly known as the Nursing Home Care Act, as amended (the "Act"), 210 ILCS 45/1-101, et seq.

24. At all times relevant to the Complaint, ALDEN-TOWN MANOR, operated by Defendant, was a "facility" as defined by § 45/1-113 of the Act and was subject to the requirements of the Act and regulations of the Illinois Department of Public Health promulgated by the Act.

25. At all times relevant to the Complaint, ALDEN-TOWN MANOR was subject to the requirements of 42 U.S.C. § 1396r (1990) et seq. as amended by the Omnibus Budget Reconciliation Act of 1987 ("OBRA").

26. At all times relevant to the Complaint, ALDEN-TOWN MANOR was subject to the requirements of Volume 42, Code of Federal Regulations, Part 483 setting forth Medicare and Medicare Requirements for Long Term Facilities ("OBRA REGULATIONS"), as effective on October 1, 1990.

27. At all times relevant to the Complaint, ALDEN-TOWN MANOR, operated by Defendant, was a "nursing" facility as defined by 42 U.S.C. § 1396r.

28. During her residency at ALDEN-TOWN MANOR, GERONIMO NUNEZ was forced to submit herself to **elder neglect**, failure of the facility to attend to her physical care needs, and failure of the facility to maintain appropriate nutritional and hydrational status.

29. That on and before June 2009, and at all times material, ALDEN-TOWN MANOR was doing business as ALDEN-TOWN MANOR, and was a “facility” as defined by Section 1-112 of the Nursing Home Care Act and was subject to the requirements of the Act and the regulations of the Illinois Department of Public Health promulgated pursuant to the Act.

30. That on and before June 2009, and at all times relevant, the defendant was subject to the federal Nursing Home Reform Act (“NHRA”), enacted as part of the Omnibus Budget Reconciliation Act of 1987 (“OBRA”), and its implementing regulations.

31. Pursuant to the Nursing Home Care Act, at all times relevant, ALDEN-TOWN MANOR had a duty to refrain from intentionally or negligently causing injury to its residents, including GERONIMO NUNEZ.

32. That at all times relevant, ALDEN-TOWN MANOR, accepted GERONIMO NUNEZ as a patient, and agreed to render competent and adequate care, diagnosis, treatment, and services to GERONIMO NUNEZ, by and through its physicians, nurses, employees, agents, actual and/or apparent, for pecuniary consideration.

33. That at all times relevant, ALDEN-TOWN MANOR, accepted GERONIMO NUNEZ as a patient, and agreed to render competent and adequate nursing care services in conjunction with her illness/condition, and ALDEN-TOWN MANOR, by and through its physicians, nurses, employees, agents, actual and/or apparent, undertook to render such care, diagnosis, treatment, and services, for pecuniary consideration.

34. That at all times relevant herein, GERONIMO NUNEZ had entrusted herself to the care of ALDEN-TOWN MANOR and its various physicians, nurses, employees, agents, actual and/or apparent. ALDEN-TOWN MANOR and its physicians, nurses, employees, agents, actual and/or apparent, to render all nursing care, medical care and/or assessments, services, and treatments provided by those institutions similarly licensed and accredited under like and similar circumstances, in accordance with the accepted standards of medical, hospital, and nursing practices and opinions then prevailing, including but not limited to all policies and procedures and all requirements for licensure and accreditation in Illinois.

35. During the period of GERONIMO NUNEZ'S residency at ALDEN-TOWN MANOR, Defendant violated the Act by the following negligent acts and omissions and statutory violations:

(a) Carelessly In violation of §483.75 of the OBRA REGULATIONS, failed to administer the facility in a manner to attain or maintain the highest practical, physical, mental and psychological well being of each resident including GERONIMO NUNEZ;

(b) In violation of §483.75(b) of the OBRA REGULATIONS, failed to operate and provide services in compliance with all applicable professional standards by including, but not limited to, inadequate documentation in GERONIMO'S clinical record, failing to update the care plan, failing to institute appropriate nursing interventions, and failing to provide regular assessment of GERONIMO NUNEZ;

(c) In violation of §483.10(b)(11) 1) of the OBRA REGULATIONS, failed to inform GERONIMO'S family that her physical condition was deteriorating;

(d) In violation of §483.15(a) of the OBRA REGULATIONS, failed to promote care for GERONIMO in a manner and in an environment that maintained or enhanced GERONIMO'S dignity and respect in full recognition of GERONIMO'S individuality;

(e) In violation of §483.20 of the OBRA REGULATIONS, failed to conduct initially and periodically, a comprehensive, accurate, standardized, reproducible assessment of GERONIMO'S functional capacity;

- (f) In violation of §483.25 of the OBRA REGULATIONS, failed to provide GERONIMO with necessary care and services to attain and maintain the highest practicable physical, mental and psychological well-being, in accordance with a comprehensive assessment and plan of care;
- (g) In violation of §483.25(i)(1) of the OBRA REGULATIONS, failed to ensure that GERONIMO maintained acceptable parameters of nutrition and hydration status;
- (h) In violation of §483.25(i)(2) of the OBRA REGULATIONS, failed to ensure that GERONIMO received a therapeutic diet after nutritional problems developed;
- (i) In violation of §483.25(j) of the OBRA REGULATIONS, failed to ensure that GERONIMO maintained sufficient fluid intake to maintain proper hydration and health;
- (j) In violation of §483.30 of the OBRA REGULATIONS, failed to have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of GERONIMO, as determined by assessments and individual plans of care;
- (k) In violation of §483.40(1) of the OBRA REGULATIONS, failed to ensure that GERONIMO'S medical care was appropriately supervised by her physician;
- (l) In violation of §483.25(k)(3) of the OBRA REGULATIONS, failed to ensure that physician orders were carried out;
- (m) In violation of Ill. Admin. Code tit. 77, § I(c)300.1210(a), failed to provide adequate and properly supervised nursing care and personal care to GERONIMO to meet GERONIMO'S total nursing care and personal care needs;
- (n) In violation of Ill. Admin. Code tit. 77, § I(c)300.1210(a), failed to provide GERONIMO restorative and rehabilitative nursing measures to meet her individual care needs;
- (o) In violation of Ill. Admin. Code tit. 77, § I(c)300.1210(b)(4), failed to institute a regular program to provide proper daily personal attention, including skin, nails, hair, and oral hygiene, in addition to treatment ordered by the physician;
- (p) In violation of Ill. Admin. Code tit. 77, § I(c)300.1250, failed to provide GERONIMO with an adequate diet and supplements in order to attain and maintain appropriate nutritional levels;
- (q) In violation of Ill. Admin. Code tit. 77, § I(c)300.3240(p), failed to notice GERONIMO'S family of changes in her condition;
- (r) In violation of ILL. ADMIN. CODE tit. 77, § I(c)300.3240(a), failed to protect GERONIMO from abuse and **neglect**;
- (s) In violation of ILL. ADMIN. CODE tit. 77, § I(c)300.1210(b)(2), failed to administer treatments and procedures to GERONIMO as ordered by her physician;
- (t) Failed to appropriately assess GERONIMO'S risk for malnutrition;
- (u) Failed to develop a compressive plan of care to address GERONIMO'S risk for malnutrition;
- (v) Failed to implement a compressive plan of care to address GERONIMO'S risk for malnutrition;
- (w) Failed to re-evaluate GERONIMO'S condition once she became malnourished and take steps to ensure that she receive adequate nutrition and hydration;

(x) Failed to follow physician's orders in the administration of medications and supplements to GERONIMO;

(y) Failed to timely communicate GERONIMO'S laboratory results to the appropriate personnel.

36. The Nursing Home Care Act, as amended, provides as follows

The licensee shall be responsible for costs and attorney's fees to a facility resident whose rights, as specified in part 1 of Article 2 of this Act, are violated (210 ILCS 45/3-602).

37. The Nursing Home Care Act, as amended, provides as follows

"The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agency or employees which injures the residents (210 ILCS 45/3-602).

38. As a direct and proximate result of one or more of the Defendant's statutory violations and negligent acts or omissions, GERONIMO NUNEZ sustained injuries including, but not limited to, deterioration in GERONIMO NUNEZ'S physical and mental condition all of which caused or contributed to her death.

39. Plaintiff, ESTATE OF GERONIMO NUNEZ, brings this action on behalf of GERONIMO NUNEZ, pursuant to the Illinois Survival Act, 755 ILCS 5/27-6, commonly known as the Illinois Survival Statute.

**WHEREFORE** the plaintiff, ESTATE OF GERONIMO NUNEZ, prays that this Court enter judgment in her favor and against the defendants, awarding compensatory damages in excess of this Court's Fifty Thousand Dollar (\$50,000.00) jurisdictional amount, costs, and attorneys' fees, as well as any other relief this Court deems just and appropriate.

## **Count II**

### **(Wrongful Death - ALDEN-TOWN MANOR Skilled Nursing and Living Center)**

#### **(Common Law Negligence)**

40. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through thirty-nine (39) of Count I as paragraphs one (1) through thirty-nine (39) of this Count II with the same force and effect as though fully set forth herein.

41. GERONIMO NUNEZ'S next-of-kin suffered injuries as a result of decedent's death, including loss of companionship and society. Further, the estate of the decedent was diminished by virtue of the medical and funeral expenses that were incurred.

42. That the decedent, GERONIMO NUNEZ, left surviving her:

(A) Alejandro Nunez

(B) Javier Nunez

(C) Leonardo Nunez

(D) Sergio Nunez

(E) Geronimo Nunez, Jr.

(F) Ventura Nunez

(G) Florina Nunez

(H) Lupe Sosa

(I) Procopio

Flovio

(K) Rafa

43. ESTATE OF GERONIMO NUNEZ, brings this action pursuant to 740 ILCS 180/1, et seq. commonly known as the Illinois Wrongful Death Act.

**WHEREFORE** the plaintiff, ESTATE OF GERONIMO NUNEZ, prays that this Court enter judgment in her favor and against the defendant, ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC., awarding compensatory damages in excess of this Court's Fifty Thousand Dollar (\$50,000.00) jurisdictional amount, costs, and attorneys' fees, as well as any other relief this Court deems just and appropriate.

#### **JURY DEMAND**

Plaintiffs, ESTATE OF GERONIMO NUNEZ, asserts his right under the Article I, Section 13 of the Illinois Constitution and demands, in accordance with Section 5/2-1105 of Illinois Code of Civil Procedure, a trial by jury on all issues.

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